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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Gibraltar

Working paper prepared by the Secretariat

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Note: The information contained in the present working paper has been derived from information transmitted to the Secretary-General by the administering Power under Article 73 *e* of the Charter of the United Nations as well as information provided by the Government of Spain and that available in public sources, including those of the territorial Government. Information was transmitted by the administering Power on 11 January 2016. Further details are contained in previous working papers, available from www.un.org/en/decolonization/workingpapers.shtml.

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I. General

1. Gibraltar is a Non-Self-Governing Territory administered by the United Kingdom of Great Britain and Northern Ireland. According to the administering Power, the basis of the current relationship between the Government of the United Kingdom and its Non-Self-Governing Territories is enshrined in the constitution of each Territory; sovereignty over Gibraltar was ceded to the United Kingdom by Spain under the Treaty of Utrecht in 1713, with territorial waters flowing from sovereignty over the land. For its part, Spain claims that, under article 10 of the Treaty, it ceded only the city and castle of Gibraltar, its port, defences and fortresses. Against the backdrop of its long-standing appeal to Spain and the United Kingdom to hold talks on the question of Gibraltar (see resolution 2070 (XX), adopted on 16 December 1965), in 2015, the General Assembly, in its decision 70/520, among other things, urged the Governments of Spain and the United Kingdom, while listening to the interests and aspirations of Gibraltar that were legitimate under international law, to reach, in the spirit of the Brussels Declaration of 27 November 1984, a definitive solution to the question, in the light of the relevant resolutions of the Assembly and applicable principles, and in the spirit of the Charter of the United Nations (see sects. VIII and IX below).

2. The Territory is a narrow peninsula extending southward from the south-west coast of Spain, to which it is connected by an isthmus approximately 1.6 km long. The Spanish port of Algeciras lies 8 km across the bay to the west, and the continent of Africa is situated 32 km across the Strait of Gibraltar to the south. According to the administering Power, the area of Gibraltar is 5.8 km^2; according to Spain, which claims sovereignty over the Territory, it is 4.8 km^2. Issues relating to the isthmus and waters off Gibraltar continue to be a subject of contention.

3. According to the administering Power, in 2015, the population of the Territory was 33,140. The currency of the Territory is the Gibraltar pound, circulating at par with the pound sterling. The Territory's main trading and commercial transactions are with European countries, the United States of America and North African countries. The British Overseas Territories Act 2002 provides for the granting of British citizenship to British overseas territory citizens.

II. Constitutional, legal and political issues

4. Under the Gibraltar Constitution Order 2006, the Government of Gibraltar consists of the elected ministers represented in the Council of Ministers and the Governor, who represents the British Crown. Lieutenant General Edward Davis has been the Governor since January 2016. In accordance with the 2006 Constitution, the Governor is responsible for the conduct of external affairs, defence, internal security (including the police, in conjunction with the Gibraltar Police Authority) and for certain appointments to public office as conferred on him by it. The elected Government of Gibraltar is responsible for all other matters.

5. Following an election, the Governor, at his own discretion, appoints as Chief Minister the elected member of the Parliament who, in his judgement, is most likely to command the greatest measure of confidence of his peers. Other ministers are appointed by the Governor, acting in accordance with the advice of the Chief Minister, from among the elected members of the Parliament. In accordance with

the 2006 Constitution, the Parliament may make laws for the peace, order and good government of Gibraltar, while the British Crown retains full power to make laws from time to time for the same above-mentioned purposes. According to the administering Power, such powers have not been exercised by the British Crown since the 2006 Constitution came into force. The 2006 Constitution also makes provisions regarding Crown lands in Gibraltar.

6. Gibraltar has a supreme court allowing for appeals to a court of appeal and subsequently to Her Majesty in Council, acting on the advice of the Judicial Committee of the Privy Council.

7. The Gibraltar Socialist Labour Party/Liberal Party of Gibraltar alliance headed by Fabian Picardo won the general elections held on 26 November 2015 with 68.03 per cent of the votes, winning 10 seats in the Parliament, against 31.37 per cent for the Gibraltar Social Democrats, who won the remaining 7 seats, with 0.6 per cent of votes rejected. Mr. Picardo was re-elected as Chief Minister. The next election is expected to be held in 2019.

8. The 2006 Constitution recognizes that, without prejudice to the administering Power's ultimate responsibility for Gibraltar's compliance with European Union law, matters which under the 2006 Constitution are the responsibility of the elected ministers shall not cease to be so even though they arise in the context of the European Union. In June 2004, after a legal and political campaign to exercise the right to vote in European elections, Gibraltarians took part in European parliamentary elections for the first time, which was achieved by the creation of a new electoral region for the purposes of the European parliamentary elections only, consisting of Gibraltar and the south-west region of England (the "combined region") by the administering Power. Gibraltarians again took part in European parliamentary elections in June 2009 and May 2014. According to the administering Power, Gibraltarians will participate in the forthcoming referendum on the United Kingdom's membership of the European Union, which will take place on 23 June 2016.

9. The United Kingdom continues to believe that, as a separate Territory recognized by the United Nations and included since 1946 in its list of Non-Self-Governing Territories, Gibraltar enjoys the individual and collective rights accorded by the Charter. The United Kingdom also believes that the people of Gibraltar enjoy the right of self-determination. The administering Power is clear that the 2006 Constitution sets out the relevant competences for the Governments of the United Kingdom and Gibraltar.

10. For its part, the Government of Spain maintains the position that the 2006 Constitution does not affect the international capacity of Gibraltar; that its adoption was a reform of the colonial regime, which remains unaltered; and that it did not affect in any way the pending decolonization process of Gibraltar, to which the principle of territorial integrity applies, not that of self-determination. In this context, the Government of Spain stresses that the participation of Gibraltar in any international instrument must be made through the United Kingdom as the administering Power responsible for the international relations of the Territory, including in the fields of international financial services, human rights and the environment.

III. Budget

11. According to the administering Power, as at March 2015 the revenue of the territorial Government for the fiscal year 2014/15 was £571.3 million and its expenditure stood at approximately £433.8 million. For the fiscal year 2015/16, the territorial Government estimated its recurrent revenue at £559.0 million, with the overall recurrent expenditure budget of £541.0 million. In addition, the territorial Government approved £94.6 million in expenditure on capital projects for 2015/16, to be funded through the Improvement and Development Fund, compared to around £104.0 million in 2014/15. The highest possible rate of effective personal tax in Gibraltar is 28 per cent, with the company tax rate at 10 per cent.

12. The Government of Spain recalls that the European Commission has been carrying out an investigation into the tax regime of Gibraltar. Spain considers that Gibraltar is a tax haven and that under that regime the profits obtained abroad by companies registered in Gibraltar are not subject to taxation.

13. On the other hand, the administering Power maintains that Gibraltar adheres to all relevant European Union directives in relation to financial supervision and regulation, direct taxation and the fight against money-laundering.

IV. Economic conditions

A. General

14. Gibraltar has no known natural resources and lacks agricultural land. The economy has increasingly focused on tourism and the provision of financial services, including banking, insurance, shipping and portfolio management, in addition to online gaming. The forecast gross domestic product of Gibraltar grew to approximately £1.637 billion in 2014/15, with an estimated gross domestic product per capita of £46,419.

15. Before 1980, the economy was largely dependent on expenditure by the Ministry of Defence of the United Kingdom. According to the administering Power, the situation changed dramatically over the years as United Kingdom military spending went from accounting for 60 per cent of the Gibraltarian economy to accounting for less than 6 per cent. According to the administering Power, in 2015, the Ministry employed some 600 people out of a workforce of about 24,000.

B. Trade

16. According to the administering Power, in 2014, the Territory's total imports amounted to approximately £1.845 billion. Some 25 per cent of non-fuel imports originate from the United Kingdom, with other sources including Germany, the Netherlands and Spain. The Territory's total exports for 2014 were worth approximately £1.450 billion. Exports continued to be mainly re-exports of petroleum and petroleum products supplied to shipping.

C. Banking and financial services

17. According to the administering Power, Gibraltar has a well-developed private financial sector that is regulated by the Financial Services Commission. The regulatory scope extends to all forms of financial services, and Gibraltar's legislation, systems and administrative practices, which, in the view of the administering Power, are in full compliance with its European Union obligations, have been independently tested by reviews by the Financial Action Task Force, the International Monetary Fund and others. Gibraltar is also participating in the Financial Action Task Force national risk assessment and peer review process.

18. Tax evasion is a predicate offence for money-laundering and subject to suspicious transaction reporting. Gibraltar's Financial Intelligence Unit, as a member of the Egmont Group, shares information systematically with other members of the Group. Gibraltar has tax information exchange agreements with 79 countries and territories. Tax information has been provided to the United States in accordance with the Foreign Account Tax Compliance Act agreement on the automatic exchange of information, while a similar agreement with the United Kingdom under the International Tax Compliance Regulations 2014 is scheduled to come into effect in 2016. In December 2015, the territorial Government published regulations for the automatic exchange of information with member States of the European Union, the International Cooperation (Improvement of International Tax Compliance) Regulations 2015, in order to implement the requirements of the Common Reporting Standard of the Organization for Economic Cooperation and Development (OECD), which came into force on 1 January 2016.

19. On 14 October 2015, the Committee of Ministers of the Council of Europe adopted a resolution by which it agreed to the request of the United Kingdom on behalf of Gibraltar to provide for the evaluation of Gibraltar by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism. Furthermore, in the communiqué adopted at the fourth meeting of the Overseas Territories Joint Ministerial Council, held in London on 1 and 2 December 2015, all overseas territories with financial services confirmed their full commitment to international cooperation in tax matters and to the fight against money-laundering, tax evasion, illicit finances and corruption.

20. The Government of Spain recalls that the European Anti-fraud Office of the European Commission concluded in a 2014 report that there was reason to believe that crimes of tobacco smuggling and money-laundering from Gibraltar had been committed, affecting the financial and other interests of the European Union.

21. The administering Power indicates that legal opinions have since been obtained by the Government of Gibraltar which suggested that allegations in the report of the Office were unfounded.

D. Transportation

22. Enhancements to road transportation arrangements in and out of Gibraltar were agreed upon at talks held in Córdoba, Spain, in 2006. They included the introduction at the fence/frontier of lanes in both directions, and red and green channels for both people and vehicles. Proportionate customs and police checks remain necessary, given that Gibraltar does not belong to the common customs

territory of the European Union. Moreover, the United Kingdom and Gibraltar do not belong to the Schengen area for external border control purposes. In the view of the administering Power, since 26 July 2013, the Government of Spain has imposed disproportionate and time-consuming checks at the border between Gibraltar and Spain; while the situation has improved relative to the summer of 2013, it remains unpredictable.

23. The European Commission has dispatched three technical fact-finding missions to La Línea de la Concepción and Gibraltar, in September 2013, July 2014 and October 2015. The Commission issued recommendations to the authorities of the United Kingdom and Spain following its first two missions.

24. Spain stresses that the checks at the fence are in no manner politically motivated and are carried out only to ensure strict compliance with Spanish and European Union legislation, in accordance with the principles of randomness, proportionality and non-discrimination. The checks are essential for Spain to fulfil its obligations vis-à-vis the whole of the European Union and are especially necessary taking into account that in the area illicit trafficking of different sorts is common and that Gibraltar is neither in the Schengen area nor in the European Union Customs Union. Moreover, Spain underlines that the police and customs checkpoint at La Línea de la Concepción (the fence) does not correspond to the demarcation of the border recognized by Spain in accordance with the Treaty of Utrecht. There remain, sporadically, delays to vehicular and pedestrian traffic at the fence. Spain further stresses that it has fully complied with the recommendations of the European Commission regarding the management at the fence of the flow of persons, vehicles and goods and completed in 2015 the restructuring of the customs checkpoint and the installation of 13 automatic electronic passport-reading machines in each direction, which has made transit more fluid.

25. The United Kingdom continues to be responsible for all international obligations relating to aviation safety and security in respect of the airport, a military airfield available for civilian flights, with the Ministry of Defence retaining ownership of and operational responsibility for the military aviation aspects of the airfield. According to the administering Power, legislation enacted by the Gibraltar Parliament provides for civil aviation safety and security, making civil aviation a responsibility of the Government of Gibraltar. Such responsibility continues to be rejected by Spain. Spain holds the position that the occupation by the United Kingdom of the isthmus on which the airfield was built is illegal and that it does not comply with public international law because it is not included among the areas ceded by the Treaty of Utrecht. For its part, the United Kingdom maintains that its sovereignty extends over the whole territory of Gibraltar.

26. The Strait of Gibraltar is a principal water route; the Territory's port facilities are used by many long-distance liners and cargo ships. According to the United Kingdom, it applies a three-nautical-mile area for British Gibraltar territorial waters (or less where the median line with other territorial waters applies), in line with the United Nations Convention on the Law of the Sea. According to Spain, it exerts its sovereign rights and jurisdiction over its territorial waters, including all maritime areas around Gibraltar (with the only exception being its port facilities).

27. The administering Power regularly challenges Spanish State vessels and protests to the Government of Spain about illegal incursions into British Gibraltar territorial waters by Spanish State vessels, citing violations of articles 17 to 19 of

the United Nations Convention on the Law of the Sea, on the meaning of innocent passage, and of the Convention on the International Regulations for Preventing Collisions at Sea.

28. For its part, Spain states that what the United Kingdom describes as "illegal incursions" by Spanish vessels are routine activities of its ships in Spanish waters.

E. Tourism

29. The tourism sector recorded a decrease, from 11.1 million visitors in 2013 to approximately 10.3 million visitors in 2014. The breakdown of the visitors in 2014 was around 176,000 by air (compared to approximately 165,000 in 2013), 313,000 by sea (293,000 in 2013) and 9,762,000 by land (10,653,000 in 2013). In the view of the administering Power, this decrease occurred during a period in which delays at the frontier were frequent. Arrivals by land comprise mainly day visitors arriving from Spain; arrivals by air are primarily tourists from the United Kingdom; and arrivals by sea include visitors arriving by ferry from Morocco and on day trips from cruise ships.

V. Social conditions

A. Labour

30. According to the administering Power, as at October 2014, there were 24,422 jobs in the Territory, including, from the largest industrial sectors, 3,017 jobs in building and construction, 3,388 in banking and finance, 3,172 in gambling and betting and 2,542 in the retail and wholesale trade. The unemployment rate stood at 2.8 per cent of the resident population and 1.8 per cent of the total workforce, which included frontier workers.

B. Social security and welfare

31. The social security and welfare sectors in Gibraltar continue to be governed by various social security acts, as mentioned in previous working papers, covering areas such as employment injury, disablement and industrial death benefits, maternity grants and allowances, death grants, old age pensions, survivor's benefits and guardian's allowances.

C. Public health

32. The Gibraltar Health Authority, a department of the territorial Government, is responsible for providing health care in the Territory. The territorial Government continues to deal with the needs of the elderly.

D. Education

33. Education in Gibraltar is free and compulsory for children between 4 and 15 years of age. The language of instruction is English. Public education comprises 11 primary and 2 secondary schools, in addition to the Gibraltar College of Further Education and the Vocational Training Centre, serving more than 5,000 students. The Territory's literacy rate is assumed to be nearly 100 per cent. The University of Gibraltar, whose establishment had been announced in 2014 with the approved funding of £10 million, officially opened in September 2015.

34. According to the administering Power, government expenditure on education during the year ending in March 2015 was around £42 million, with expenditure on improving school buildings in the region of £1.4 million. Students who obtain a place at a university in the United Kingdom are entitled to scholarships from the Government of Gibraltar. In 2015, 931 students attended universities in the United Kingdom.

E. Crime and public safety

35. Law enforcement in the Territory is the responsibility of the Royal Gibraltar Police, in conjunction with the Gibraltar Police Authority. The Governor has overall, ultimate responsibility for the integrity, probity and independence of policing in Gibraltar and for the policing aspects of national security, including internal security.

36. According to the Gibraltar Annual Policing Plan 2015-2016, the Royal Gibraltar Police intends to implement measures and develop strategies aimed at reducing the overall level of crime. Furthermore, given that the supply of drugs and their consumption, as well as their undisputed link to crime, remains a major concern, the police considers this area of policing a key component to providing a safe community, and, through education, awareness and effective enforcement, it will strive to make the whole of Gibraltar, including its surrounding waters, a very difficult place in which and from which those intent on supplying drugs can operate. According to the administering Power, this is in response to a survey conducted by the Gibraltar Police Authority in 2014 which identified the supply and misuse of drugs as an issue to be addressed in police planning.

37. According to the administering Power, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, a convention under the auspices of OECD, has been extended to Gibraltar.

F. Human rights

38. The following major international human rights instruments apply in Gibraltar: the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the European Convention for the Protection of Human Rights and Fundamental Freedoms. The 2006 Constitution of the Territory includes a chapter on the fundamental rights and freedoms of the individual. In October 2013, the Government of Gibraltar formally requested the extension of the Convention on the Elimination of All Forms of

Discrimination against Women to the Territory. The Government of Gibraltar has continued to work closely with United Kingdom counterparts to explore the extension to Gibraltar of the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

VI. Environment

39. In the communiqué adopted at the fourth meeting of the Overseas Territories Joint Ministerial Council in 2015, as mentioned above, the United Kingdom and overseas territories leaders recognized the urgent need to promote and facilitate renewable energy and energy efficiency and to address the challenges of energy security and climate change mitigation.

VII. Forum for Dialogue on Gibraltar

40. Negotiations between the United Kingdom and Spain on the subject of Gibraltar led in 2004 to the establishment of the trilateral Forum for Dialogue on Gibraltar. Since 2010, no meetings have been held. From 2012 to 2014, the United Kingdom expressed the desire to continue with the Forum and, as an alternative, offered an informal, ad hoc dialogue involving, as appropriate, all relevant parties to the issues under discussion. Spain expressed the position that the Forum no longer existed and should be replaced with a new "ad hoc" mechanism for local cooperation in the interest of social well-being and regional economic development, in which the people of the Campo de Gibraltar and Gibraltar were represented. No ad hoc talks had been convened as at February 2016.

VIII. Future status of the Territory

A. Position of the administering Power

41. In a statement in exercise of the right of reply before the Special Political and Decolonization Committee (Fourth Committee) of the General Assembly, on 9 October 2015, the representative of the United Kingdom said that his Government recalled its sovereignty over Gibraltar and the territorial waters surrounding it and reaffirmed that Gibraltar enjoyed the rights accorded to it under the Charter. It also recalled that the people of Gibraltar enjoyed the right to self-determination and that the 2006 Constitution, endorsed in a referendum, provided for a modern and mature relationship between Gibraltar and the United Kingdom. His Government reaffirmed that it would not enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another State against their freely and democratically expressed wishes and confirmed that it would not enter into a process of sovereignty negotiations with which Gibraltar was not content. It reaffirmed its commitment to safeguarding Gibraltar, its people and its economy.

42. He also stated that the United Kingdom and Gibraltar remained firmly committed to the trilateral Forum for Dialogue as the most credible, constructive and practical means of strengthening relations amongst all parties. The United Kingdom regretted that the Government of Spain had withdrawn formally from

those talks in 2011. Following an initial proposal by the United Kingdom and Gibraltar to Spain in April 2012, the United Kingdom sought to proceed to ad hoc talks among officials with a view to advancing cooperation on mutually important issues by means that fully reflected the wishes, interests, rights and responsibilities of the people of Gibraltar. Discussions continued with Gibraltar and Spain to bring about those ad hoc talks. Under the 2006 Constitution, Gibraltar had competence for all policy areas except external relations, defence and internal security, which were reserved for the United Kingdom. Gibraltar's active negotiation in any dialogue process was therefore non-negotiable.

43. Furthermore, he stated that the United Kingdom refuted the allegations that it had illegally occupied the isthmus and the surrounding waters. Under the United Nations Convention on the Law of the Sea, territorial waters flowed from sovereignty over the land. The State which was sovereign over the land was also sovereign over the territorial waters out to three nautical lines or to the median line. His Government had made its position clear to the Spanish Government whenever necessary and would continue to uphold British sovereignty and implement a range of proportionate naval and diplomatic responses to illegal incursions by Spanish vessels into British Gibraltar territorial waters.

44. He went on to say that the Government of Gibraltar was ready to work with its Spanish counterparts across the full range of law enforcement challenges. His delegation recalled the frequent cooperation between the Royal Gibraltar Police and the Spanish Guardia Civil, which benefited both Spain and Gibraltar. Gibraltar had constitutional competence for taxation and maintained a fair and open tax system. It complied with all applicable European Union directives and regulations for financial services, taxation and money-laundering, including the savings directive and the mutual assistance directive. OECD listed Gibraltar among the jurisdictions which had substantially implemented the internationally agreed tax standard alongside the United Kingdom, Germany and the United States.

45. The representative also said that Gibraltar had made strong progress on tax information exchange agreements, having signed 27 of them and formed over 130 equivalent relationships with States which were signatories to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters of OECD and with all the European Union member States. Gibraltar had sent a written proposal for such an agreement to Spain, but to date had received no reply. Nevertheless, information exchange between Gibraltar and Spain still took place under the European Union's mutual assistance directive and the Convention. Moreover, Gibraltar had extended automatic exchange of information to five European Union member States, including Spain. Gibraltar would continue to cooperate with the European Commission's investigation into one aspect of its tax regime with support from the British Government, which was confident that the tax regime complied with all applicable European Union and international standards. The 2014 European Anti-fraud Office report had elicited concern from both the Spanish and Gibraltar authorities with regard to cigarette smuggling over the Gibraltarian-Spanish border. The European Commission had recognized Gibraltar's commitment to tackling tobacco smuggling and the significant steps taken to date, including restricting the number of cigarettes allowed in the land border area to 200 per person. Gibraltar had repeatedly expressed its desire to work more closely and directly with its Spanish counterparts on that issue.

46. He concluded by saying that Gibraltar's creation of the reef had been deemed legal by the European Commission in 2014 and was part of its long-term marine environment management plan for improving fish stocks and regenerating the marine habitat. The use of concrete blocks to create artificial reefs was consistent with international best practices and the Spanish Government's own approach. Gibraltar's environment, including British Gibraltar territorial waters, was the responsibility of its Government, which was aware of its obligations under European Union law and relevant international treaties and conventions (see A/C.4/70/SR.3).

B. Position of the territorial Government

47. On 9 October 2015, addressing the Fourth Committee, the Chief Minister of Gibraltar said, inter alia, that it remained the last colony in Europe only because of the insistence of the Government of Spain that the inalienable principle of self-determination should not apply to Gibraltarians, contrary to the provisions of the Charter and relevant decolonization resolutions. Every year, the quest of the people of Gibraltar for their nation to be removed from the list of Non-Self-Governing Territories was obstructed, while successive political administrations had already put in place the building blocks of nationhood. Gibraltar was better prepared for self-governance than many other former colonies.

48. He also stated that exchange of information agreements with 79 countries and the imminent establishment of a central register of beneficial ownership of companies illustrated that Gibraltar was fully committed to transparency in international financial transactions. He further stated that the Government of Spain was seeking to impede the decolonization of Gibraltar, to denigrate its economy and to prevent Gibraltarians from freely and fairly choosing their political future in order to obtain sovereignty over Gibraltar without the consent of its people.

49. Furthermore, he stated that Spain had withdrawn from the trilateral Forum for Dialogue, even though it had been recognized by a former Minister for Foreign Affairs of Spain as the only process that facilitated cooperation among all parties, and held that, like the United Kingdom, the Territory remained committed to the Forum and was convinced that, with dialogue and cooperation, it would be mutually beneficial to the economies on both sides of the border (see A/C.4/70/SR.3).

C. Position of the Government of Spain

50. On 9 October 2015, in his statement made before the Fourth Committee, the representative of Spain stated that, once again, Spain was appearing before the Committee to ask the United Kingdom — a friend, partner and ally — to comply with the United Nations mandate and negotiate on Gibraltar. Spain was ready to begin negotiations to reach a definitive solution in accordance with the relevant General Assembly resolutions, the applicable principles and the Charter, and was counting on the United Kingdom to do the same, as agreed by the Ministers for Foreign Affairs of both countries in 1984. Well into the Third International Decade for the Eradication of Colonialism, the situation in Gibraltar was a historical anachronism that had not changed because the administering Power refused to resume negotiations on the issue of sovereignty. He recalled that under the Treaty of

Utrecht, Spain had ceded to the United Kingdom only the town and castle of Gibraltar, together with the port (with its internal waters only), fortifications and forts belonging thereto. Spain had never ceded territorial waters; the alleged "illegal incursions into British waters" were thus merely routine activities of Spanish vessels in Spanish waters. Furthermore, as the United Kingdom had acknowledged on several occasions, the Treaty made Gibraltar's independence unviable without the consent of Spain. Decolonization was nonetheless possible when administering Powers demonstrated political will, as the British Crown had done in a number of former Territories.

51. He went on to say that, in keeping with the established General Assembly doctrine that the different territorial situations must be addressed on a case-by-case basis, Spain maintained that in the case of Gibraltar, it was not the principle of self-determination that applied, but that of the restitution of Spain's territorial integrity. The interests of the population of Gibraltar must be taken into account, but in the negotiations with Spain, the United Kingdom was responsible for representing those interests as the administering Power. Its new Constitution notwithstanding, the international status of Gibraltar had not changed and its local authorities had no legitimacy to interfere in the negotiations on the dispute resulting from the illegal occupation by the United Kingdom of the isthmus and the surrounding waters.

52. He further stated that Spain did not and would never accept a colonial situation that was in violation of international law and was detrimental not only to the daily lives of the people of the region, but also to the treasuries of Spain and the European Union. In 2013, Gibraltarian authorities had sunk some 70 concrete blocks into Spanish waters and were still working to reclaim land from the sea, impeding the activities of Spanish fishermen and causing environmental damage to Spain. In addition, Gibraltarian authorities had implemented a zero-tax system for foreign companies conducting business there, and had also issued hundreds of tax rulings granting a privileged fiscal regime to certain companies, thus creating non-transparent competition for Spanish and European tax systems and making it impossible to identify the company owners. Furthermore, while cigarette smuggling from Gibraltar had attained alarming levels, with economic losses for the region of Andalusia alone amounting to some €800 million, Gibraltarian authorities paid only lip service to combating illicit trafficking. The European Anti-fraud Office had indicated, in a 2014 report, that it had found evidence that crimes of smuggling and money-laundering had been committed, affecting the financial and other interests of the European Union. The European Union was also investigating Gibraltar with regard to possible violations of environmental and tax regulations.

53. He also stated that for the purposes of defence and fulfilling its obligations as a member of the European Union Customs Union and the Schengen Agreement, Spain conducted mandatory identity and customs checks regularly at the border fence with the Rock. However, in doing so, it always sought to ensure the social well-being and economic development of the inhabitants of both Gibraltar and the surrounding area of Campo de Gibraltar. Spain was therefore ready to set up an ad hoc regional cooperation mechanism involving Spain, the United Kingdom, local authorities from Gibraltar and their neighbouring Spanish counterparts, as well as European Commission observers, to replace the defunct trilateral Forum for Dialogue, which had become a tool for advancing Gibraltar's sovereignty claims. He noted that the United Kingdom and Spain were committed to reinforcing

cooperation in the fight against organized crime in the zone and were currently exchanging proposals to achieve that common goal (see A/C.4/70/SR.3).

D. Negotiations between the United Kingdom and Spain

54. Within the framework of the Brussels Process, which is separate from the Forum for Dialogue, no bilateral negotiations were held in 2015. The Government of the United Kingdom has made it clear in the preamble to the 2006 Constitution of Gibraltar that it would "never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another state against their freely and democratically expressed wishes". Moreover, the United Kingdom has also declared that no sovereignty-related talks can be entered into without the consent of Gibraltar, nor can it enter into a process of sovereignty negotiations with which Gibraltar is not content.

55. For its part, the Government of Spain continued to demand the renewal of bilateral sovereignty talks with the Government of the United Kingdom. It considers that the position of the United Kingdom goes against the doctrine established in the relevant General Assembly resolutions and against the commitment made with Spain in the Brussels Declaration of 1984.

E. Discussions between the United Kingdom and Gibraltar

56. At the third meeting of the Overseas Territories Joint Ministerial Council, held in London on 2 and 3 December 2014, the United Kingdom and overseas territory leaders affirmed in the communiqué of the Council that, for those Territories with permanent populations who wished it, the United Kingdom would continue to support requests for the removal of the Territory from the United Nations list of Non-Self-Governing Territories. In addition, at the above-mentioned fourth meeting of the Council, in 2015, the United Kingdom and overseas territories leaders further affirmed, among other things, that the principle of equal rights and self-determination of peoples, as enshrined in the Charter, applied to the peoples of the overseas territories and reaffirmed the importance of promoting the right of the peoples of the territories to self-determination, a collective responsibility of all parts of the Government of the United Kingdom.

57. The Governments of the United Kingdom and Gibraltar have both recognized that the current Constitution provides for a modern and mature constitutional relationship between the two sides. The Government of Gibraltar believes it important to review the 2006 Constitution, together with the United Kingdom, to assess what further progress or changes are necessary and appropriate. This review should include the consideration of human rights issues and the question of removal of Gibraltar from the list of Non-Self-Governing Territories. While the United Kingdom has expressed its views about the mechanisms for delisting, both Governments note that, under Article 73 *e* of the Charter, the United Kingdom is obliged to continue to submit annual reports until such time as the General Assembly removes a Territory from its list of Non-Self-Governing Territories.

IX. Consideration by the United Nations

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

58. A representative of Spain attended the Caribbean regional seminar, held in Managua from 19 to 21 May 2015, and made a statement, as did a representative of Gibraltar (see A/70/23, annex II).

59. The Special Committee, which discussed the question of Gibraltar in a meeting held on 15 June 2015, had before it the 2015 working paper prepared by the Secretariat concerning the Territory (A/AC.109/2015/13). As reflected in the summary record (A/AC.109/2015/SR.2), statements were made by the representative of Spain, the Chief Minister of Gibraltar and a representative of a civil society organization. On the proposal of the Chair, the Committee decided to resume the consideration of the question at its next session and to transmit the relevant documentation to the General Assembly in order to facilitate the consideration of the question by the Fourth Committee.

B. Special Political and Decolonization Committee (Fourth Committee)

60. The Fourth Committee of the General Assembly considered the question of Gibraltar on 9 October 2015 at its 3rd meeting, in which the Committee heard statements by Spain and the Chief Minister of Gibraltar. In addition, on 15 October 2015 at the 7th meeting, the United Kingdom made a statement. At the above-mentioned meetings, the United Kingdom and Spain exercised the right of reply (see A/C.4/70/SR.3 and 7).

61. At its meeting on 12 November 2015, the Fourth Committee adopted without a vote a draft decision on the question of Gibraltar (A/C.4/70/L.5), which was submitted by the Chair of the Committee (see A/C.4/70/SR.24).

X. Action taken by the General Assembly

62. On 9 December 2015, the General Assembly, on the recommendation of the Fourth Committee, adopted, without a vote, decision 70/520, on the question of Gibraltar. In that decision:

> The General Assembly, recalling its decision 69/523 of 5 December 2014:
>
> (a) Urged the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland, while listening to the interests and aspirations of Gibraltar that were legitimate under international law, to reach, in the spirit of the Brussels Declaration of 27 November 1984, a definitive solution to the question of Gibraltar, in the light of the relevant resolutions of the General Assembly and applicable principles, and in the spirit of the Charter of the United Nations;

(b) Took note of the desire of the United Kingdom to continue with the trilateral Forum for Dialogue;

(c) Took note of the position of Spain that the Forum did not exist any longer and should be replaced with a new mechanism for locai cooperation in which the people of the Campo de Gibraltar and Gibraltar were represented;

(d) Welcomed efforts made by both parties to resolve current problems and to engage in a flexible and responsive form of dialogue between all relevant and appropriate parties, on an informal ad hoc basis, and that such efforts were aimed at finding common solutions and making progress on issues of mutual benefit.